

**PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR, ISLAMABAD**

Federal Board of Revenue
Versus
Mr. Rehan Zahid Warriach, Gujrat

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST
FINDINGS / RECOMMENDATIONS DATED 30.11.2017 PASSED BY THE FTO IN
COMPLAINT NO. 425/LHR/IT(326)/612/2017**

I am directed to refer to your representation No. 4(612)S(TO-I)/2017, dated 28.12.2017 on the above subject and to say that the President has been pleased to pass the following order:

2. This Representation dated 28.12.2017 has been filed by the Agency-FBR against the findings of the FTO dated 30.11.2017 whereby it has been held:

“FBR to-

- i. Direct the concerned CIR to decide the refund claim of the complainant as per law; and
- ii. Report compliance within 45 days.”

3. Brief facts of the case are that this complaint has been filed under Section 10(1) of the FTO Ordinance, 2000 against non-issuance of income tax refund amounting to Rs. 1.711 million for tax years 2009 to 2015. The refund arose on account of excess deduction of income tax on consumption of electricity.

4. The Complainant engaged in the business of running a CNG station contents that he filed his income tax returns for tax year 2009 on 13.10.2012, for tax year 2010 on 28.12.2010, for tax year 2011 on 10.10.2012, for tax year 2012 on 10.10.2012, for tax year 2013 on 14.10.2013, for tax year 2014 on 31.10.2014 and for tax year 2015 on 24.10.2015 and efiled refund applications under Section 170 of the Income Tax Ordinance, 2001 on 13.10.2012, 22.09.2017, 13.10.2012, 16.10.2013, 11.07.2017 and 08.07.2017 respectively followed by reminder dated 17.07.2017 but no response was made by the Deptt. neither order was passed under Section 170(4) of the Ordinance within the prescribed time nor any notice under Section 123(3) of the Ordinance was issued to the Complainant to requisition information/ documents for processing of refund. Statedly, all supportive documents were furnished to the department but the claim was not settled. This attitude of the department was construed as maladministration under FTO Ordinance.

5. When confronted under Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act No. XIV of 2013, the department vide letter No. 1288 dated 10.11.2017 stated that claim of refund requires scrutiny/ verification. By mere filing of return, a taxpayer does not become entitled to refund. Added that the Complainant has neither provided documentary evidence for scrutiny and verification nor filed prescribed refund application within the time as per Section 170(2)(a)& (c) of the Ordinance and so it could not be settled. The case is pending for want of the requisite documents to be provided by the Complainant. Furthermore, FBR vide letter No. 4(19)IT-Budget/2017 dated 23.02.2017 has clarified that no adjustment of withholding tax under any other head can be claimed. According to the department, no maladministration was involved in the case. Arguments heard and record perused by the FTO. Thus, FTO has issued aforementioned findings.

6. The instant Representation has been filed by the Agency. The Agency has stated that the Complainant has refund amounting to Rs. 172,437/-, Rs. 242,585/-, Rs. 287,707/-, Rs. 285,200/-, Rs. 284,176/-, Rs. 307,961/- and Rs. 131,370/- for tax years 2009 to 2015 of tax withheld under Section 235 of the Income Tax Ordinance, 2001. The taxpayer is not entitled to claim refund of excess payment of tax withheld in CNG cases as clarified by the FBR's letter No. 4(19)IT-Budget/2017 dated 23.02.2017. The taxpayer aggrieved on account of non- issuance of refund, filed a complaint No. 00000612/LHR/2017 dated 29.09.2017 before the H/Federal Tax Ombudsman.

7. The Agency has expressed that the FTO disposed of the complaint vide order dated 30.11.2017 with the recommendations to decide the refund claim of the Complainant as per law and report within 45 days. However, the FTO in para 5 of the impugned decision has rejected the departmental stance that the CNG stations are not entitled to claim any adjustment of tax withheld as clarified by the FBR through letter No. 4(19)IT-Budget/ 2017 dated 23.02.2017. The para 5 of the impugned decision and relevant portions of FBR's clarification is reproduced hereunder for ready reference:

“The FBR issued letter dated 23.02.2017 interpreting section 234A and issued clarification that the above mentioned tax is neither adjustable nor refundable. It is a settled law that the FBR had administrative control over the functionaries discharging their functions under the Ordinance but it does not figure in the hierarchy of the forum provided for adjudication of assessee's liability as to

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the tax. Any interpretation, placed by the FBR on a statutory provision cannot be treated as a pronouncement by a forum competent to any administrative direction of the nature which may interfere with the judicial or quasi judicial functions entrusted to the various functionaries under the statute. The interpretation of any provision of the Ordinance can be rendered judicially by the hierarchy of the forums provided for under the above provisions of the Ordinance starting from the Inland Revenue Officer to Hon'ble Supreme Court. In this view of the matter, the interpretation circulated by the FBR through letter dated 23.02.2017 of the provisions of the Ordinance can be treated as administrative interpretation and not a judicial interpretation. Reliance is placed on a reported judgment captioned as M/s Central Insurance Co and Others Vs the CBR, Islamabad and others (1993 SCMR 1232). In this view of the matter, the objection raised by the Department on the legal side stands repelled."

FBR's clarification dated 23.02.2017

"In terms of Section 234A of the Income Tax Ordinance 2001 the advance tax collected at the rate of 4% on the amount of gas bill of a compressed Natural Gas Station constitutes final tax on the income of a CNG Station arising from the consumption of gas.

It is hereby clarified that in light of sub-section (4) of Section 234A of the Ordinance, a CNG Station is not entitled to claim adjustment of withholding tax collected or deducted under any other head/ provision of this Ordinance even in instances where tax collected/ deducted under any other head is in excess of the final tax liability discharged by the taxpayer under Section 234A of the Ordinance".

The FTO has concluded:

"The delay in action and negligence in processing the claimed refund is tantamount to maladministration failing within the ambit of section u/s.2(3)(i)(d) & (ii) of the FTO Ordinance".

Recommendations:

"FBR to-

- i. Direct the concerned CIR to decide the refund claim of the complainant as per law; and
- ii. Submit report within 45 days".

8. The Agency has taken ground that the FTO was not justified to direct the FBR to issue the refund at Rs. 172,437/-, Rs. 242,585/-, Rs. 287,707/-, Rs. 285,200/-, Rs. 284,176/-, Rs. 307,961/- and Rs. 131,370/- as the CNG stations are not entitled to claim any adjustment of tax withheld as clarified by the FBR through letter No. 4(19)IT-Budget/2017 dated 23.02.2017. The FTO was not justified to entertain the complaint in terms of Section 9(2)(b) of the Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000 as the matter is beyond the scope of his jurisdiction because the issue involved pertains to interpretation of law.

9. The Agency has stated that the FTO did not establish any maladministration. He was, therefore, not competent to entertain the complaint of the taxpayer. The FTO is not justified to direct the CIR to issue refund to the taxpayer as the CIR cannot issue refund in violation of directions/ instructions of the FBR as provided in Section 214 of the Income Tax Ordinance, 2001. The President has held in a number of representations decided by him that the role of the FTO is only to identify maladministration and not to question merits of the departmental decision.

10. The Agency has prayed that the findings/ recommendations of the FTO issued in the case of the instant taxpayer may be vacated as these are ultra-jurisdictional and beyond the functions and powers of the FTO in terms of Section 9(2)(b) of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000.

11. On the other hand, the complainant has filed his written comments against the instant representation of FBR on 8.1.2018 and supported the impugned recommendations/findings of learned FTO with the request that the representation of Agency may be rejected.

12. After perusal of record and examination of all documents, it has been observed that it is as clear as the crystal that FTO has made recommendations which are only to the extent to direct the concerned CIR to decide the refund claim, as per law within 45 days. It is just a harmless order and only the Agency has to decide the issue as per law which was never denied in its written reply even by the Agency. The Agency has full powers to decide the issue either way, on merits and in accordance with the provisions of law. Thus the findings of the learned FTO are quite sustainable and the Agency has unnecessarily filed this representation. In such circumstances, this representation is liable to be rejected having no merits and the recommendations/findings of FTO are sustainable and maintainable being unexceptional in nature in the eyes of law.

13. This representation has been filed by Agency repeating the contents of the pleadings already made before the learned FTO. Nothing turns on the same as it fails to answer the reasoning of learned FTO and not even contain denial of the factual observations for his impugned decision. No grounds stand made out for interference with the decision of the FTO. Undoubtedly FTO's decision is based on sound reasoning and supported by the law. Thus, the representation is devoid of any merits and is liable to be rejected. FTO impugned findings/recommendations do not warrant any interference. Consequently FTO findings are sustainable and unexceptional having no illegality or improbability.

14. Accordingly, the President has been pleased to reject the instant representation of FBR-Agency and the impugned recommendations/findings of FTO are upheld.

(Zulfiqar Hussain Awan)
Director General (Legal Affairs)

The Chairman,
Federal Board of Revenue,
Islamabad.

No. 01/FTO/2018 dated 19.02.2018

Copy for information to:

1. Mr. Rehan Zahid Warriach, Proprietor Warriach CNG Station, Sook Kalan, Jalal Pur Jattan Road, Gujrat.
2. Z.H. Khawar, Advocate High Court, Malik Law Associates, Upper Honda Home, Opposite Church, Jinnah Road, Gujrat.
3. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
4. ✓ The Chief (Legal-I), Federal Board of Revenue, Islamabad.
5. Director to Secretary to the President.
6. Master file.


(Zulfiqar Hussain Awan)
Director General (Legal Affairs)